

REMARKS

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are requested in view of the herein remarks, which are believed to place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-8, 13-16, 19, 20, 22, 25-28 and 31-34 are pending in this application. Claims 1-8, 13, 15, 19, 20, 22 and 25-28 have been amended; claims 31-34 have been added. Support for the amendments can be found throughout the specification and from the original claims. No new matter is added.

Claim 15 has been rewritten in independent form, overcoming the objection to it and dependent claim 16.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments of and additions to the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Furthermore, it is explicitly stated that the herewith amendments should not give rise to any estoppel, as the herewith amendments are not narrowing amendments.

II. THE REJECTIONS UNDER 35 U.S.C. § 102 ARE OVERCOME

Claims 1-4, 6, 7, 13, 14, 17, 21-24 and 26-29 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Frisch *et al.*, U.S. Patent No. 5,238,904 (hereinafter "Frisch"). The rejection is traversed.

The Office Action alleges that it is inherent that the composition/method in Frisch would possess cationic-anionic electrostatic interactions and that the composition application to plants would suppress antagonistic interactions and increase crop selectivity. Frisch describes low viscosity aqueous preparations that contain glufosinate and at least one further herbicide dispersed in the aqueous phase, a combination of an alpha-olefin sulfonate and co-surfactants and surfactants. Frisch does not teach or suggest that the combination of an agrochemically active compound with cationic functional groups with an anionic polymer results in a controlled release of the active compound due to the electrostatic interactions between the two molecules.

Instead, the compositions and methods of Frisch relate to low viscosity solutions. Further, Frisch does not suggest that crop selectivity may be increased by the use of a combination of an agrochemically active compound with cationic functional groups with an anionic polymer.

It should be noted that claims 1-8, 19, 20 and 25-28 have been amended to recite methods for controlled release, rather than compositions for controlled release. This is a new and unobvious use of the composition comprising a cationic active compound and an anionic polymer, which was unappreciated by those of skill in the art until it was discovered and disclosed by the present inventors. As was explained in *In re Hack*, according to the patent statute of 1952, “[w]hile ... the discovery or invention of a *new use* of a known ... composition of matter or material may be patentable, it is obvious that such use can be nothing other than a method or process. As a matter of claim drafting, therefore, the discoverer of a new use must protect his discovery by means of process or method claims and not product claims.” 245 F.2d 246, 248, 114 USPQ 161, 163 (CCPA 1957)(emphasis in original). In the present case, the inventors are doing exactly that.

Applicants respectfully disagree with the allegation in the Final Office Action that Frisch inherently teaches controlled release of an active compound. The Examiner’s concerns with Frisch and the controlled release feature of the instant invention are analogous to situations in pharmaceutical patent practice. More specifically, pharmaceutical inventions that provide for a controlled release of a formulation are patentably distinct over art that purportedly discloses the formulation, but fails to disclose the controlled release feature. Inherency does not attach in such situations, for example, because the art fails to teach and suggest a mechanism that provides for the controlled release. In the instant case, such a mechanism exists, as is explained on pages 2-4 of the instant specification, whereby the polymers used in the invention have functional groups that form electrostatic interactions with functional groups present in the molecules of the agrochemically active compound, and interact with the active compound in such a manner that controlled release of the active compound is possible. Such teaching, however, is absent in Frisch. And as Frisch does not necessarily provide for controlled release, inherency cannot attach.

Since Frisch does not disclose, suggest, or enable a method for controlled release of an agrochemically active compound or a process for increasing crop selectivity, the claims cannot

be anticipated by Frisch. Consequently, reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) are requested.

III. THE REJECTION UNDER 35 U.S.C. § 103 IS OVERCOME

Claims 5, 19, and 20 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Frisch as applied to claims 1-4, 6, 7, 13, 14, 17, and 21-24 above. This rejection is traversed.

The relevant case law mandates that there must be some prior art teaching that would have provided the necessary incentive or motivation for modifying the reference teachings. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993). Further, as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): “The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification.” Also, for the § 103 rejection to be proper, both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants’ disclosure. *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

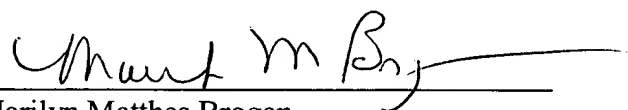
As stated above, Frisch does not teach or suggest methods for controlling release of an active compound by combining it with a specific amount of an anionic polymer. Instead, the compositions and methods of Frisch relate to low viscosity solutions. Frisch does not even teach or suggest the mechanism by which the claimed methods are accomplished, namely electrostatic interactions between a cationic active compound and an anionic polymer, much less the determination of optimum amounts and/or ratios of ingredients in order to optimize electrostatic interactions between the components. Since Frisch does not teach methods of controlled release, it cannot teach the mechanism of controlled release. Therefore, there is no way that optimization of the method to achieve the desired result (i.e. controlled release) can be taught by Frisch, when the desired result is not even taught.

Since Frisch does not teach or suggest a method wherein an electrostatic interaction between components of a composition results in controlled release of an agrochemically active compound, claims 5, 19 and 20 are patentable over Frisch. As such, reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) are respectfully requested.

CONCLUSION

Applicants believe that the application is in condition for allowance, and favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. Alternatively, consideration and entry of this paper is requested, as it places this application into better condition for purposes of appeal.

Respectfully submitted,
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